

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA, ) No. 2007 CR 634  
Plaintiff, ) April 26, 2011  
v. ) 1:00 p.m.  
JEROME FINNIGAN, )  
Defendant. )

TRANSCRIPT OF PROCEEDINGS - CHANGE OF PLEA  
BEFORE THE HON. BLANCHE M. MANNING

## APPEARANCES:

On behalf of Plaintiff: MR. BRIAN P. NETOLS  
ASSISTANT UNITED STATES ATTORNEY  
219 South Dearborn Street, 5th floor  
Chicago, Illinois 60604  
(312) 353-5300

MR. JOHN R. BLAKELY  
MS. LYNN McCARTHY  
Assistant States Attorney  
Cook County, Illinois  
2650 South California Avenue  
Chicago, Illinois 60608

On behalf of Defendant: MR. MARC M. BARNETT  
LAW OFFICES OF MARC M. BARNETT  
53 West Jackson Boulevard  
Chicago, Illinois 60604  
(312) 385-4394

MICHAEL P. SNYDER, FCRR  
Official Court Reporter  
United States District Court  
219 South Dearborn Street, Room 1432  
Chicago, Illinois 60604  
(312) 435-5563

1 THE CLERK: 07 CR 634, United States versus Finnigan.

2 MR. NETOLS: Good afternoon, Your Honor. Brian Netols  
3 on behalf of the United States.

4 MR. BLAKEY: Jack Blakey on behalf of the United  
01:04:18 5 States.

6 MR. BARNETT: Good afternoon, Your Honor.

7 MS. McCARTHY: Lynn McCarthy on behalf of the United  
8 States.

9 MR. BARNETT: Marc Barnett on behalf of Jerome  
01:04:25 10 Finnigan.

11 THE DEFENDANT: Good afternoon.

12 THE COURT: Good afternoon.

13 Okay. This is a change of plea, is that correct?

14 MR. NETOLS: Judge, for the record, we have a signed  
01:04:38 15 plea, and it's identical to the one we tendered to your  
16 chambers earlier for your review. There have been no changes.

17 THE COURT: All right.

18 You are Jerome Finnigan?

19 THE DEFENDANT: Yes, ma'am.

01:05:46 20 THE COURT: All right. Mr. Finnigan, it's my  
21 understanding that it's your intention at this time to waive  
22 indictment and offer a plea of guilty. Is that correct, sir?

23 THE DEFENDANT: Yes. Yes, Your Honor, it is.

24 THE COURT: Mr. Finnigan, before I can accept your  
01:05:59 25 waiver of indictment and guilty plea, I have to make certain

1 determinations. I have to determine that you're competent to  
2 plead at this time, you've had the assistance of counsel, that  
3 you understand your right to be prosecuted only by indictment,  
4 and you understand your trial rights. I have to determine that  
5 you understand the nature of the charges against you, that your  
6 waiver and plea are voluntary, and that there is an independent  
7 factual basis for your plea.

8 At this time I am going to have you placed under oath,  
9 and I'll ask you certain questions regarding this matter.

01:06:28 10 Before I do that, I want you to understand certain things.

11 Number one, you may consult with your lawyer while I'm  
12 asking you questions, and if you wish to do so, I will  
13 interrupt the proceedings at any point to allow you to speak to  
14 your lawyer, okay?

01:06:44 15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: You must give truthful answers. Any false  
17 answers to any of my questions could subject you to prosecution  
18 for perjury or making false statement. And in giving truthful  
19 answers to some of my questions, you will be waiving your right  
01:06:56 20 not to testify against yourself, some of your answers may very  
21 well be incriminating, and you will have to admit your guilt.

22 Do you understand everything that I have just said?

23 THE DEFENDANT: I do, ma'am.

24 THE COURT: And understanding that, are you willing to  
01:07:10 25 waive or give up your right to remain silent and answer my

1 questions?

2 THE DEFENDANT: I am, ma'am.

3 THE COURT: Okay. And if at any time you do not  
4 understand my questions, please let me know. It's very  
5 essential to a valid plea that you understand each question at  
6 each step of the proceedings as we go along, okay?

7 THE DEFENDANT: Yes, thank you.

8 THE COURT: Okay. Please swear the defendant.

9 (Defendant sworn.)

01:07:19 10 THE COURT: All right. Sir, state your full name for  
11 the record.

12 THE DEFENDANT: Jerome Finnigan.

13 THE COURT: And how old are you, Mr. Finnigan?

14 THE DEFENDANT: I'm 48, ma'am.

01:07:30 15 THE COURT: Mr. Finnigan, I take it you were born and  
16 raised in this country?

17 THE DEFENDANT: I was.

18 THE COURT: Okay. Where do you reside?

19 THE DEFENDANT: Currently at the MCC, but I resided in  
01:07:43 20 the City of Chicago.

21 THE COURT: Okay. Are you married, sir?

22 THE DEFENDANT: I am, ma'am.

23 THE COURT: What is the extent of your education?

24 THE DEFENDANT: I have high school and some college  
01:08:02 25 courses.

1                   THE COURT: Okay. And over the past three years,  
2 before you were incarcerated, what kind of work did you engage  
3 in?

4                   THE DEFENDANT: I was a police officer with the City  
01:08:10           of Chicago.

6                   THE COURT: Are you currently in good physical health,  
7 sir?

8                   THE DEFENDANT: I am, ma'am.

9                   THE COURT: Are you currently under a doctor's care or  
01:08:17           taking any kind of medication?

11                  THE DEFENDANT: I do. I have diabetes.

12                  THE COURT: Okay. And have you taken any drugs or  
13 alcoholic beverages within the last 24 hours?

14                  THE DEFENDANT: I have not, ma'am.

01:08:26           THE COURT: You've taken your --

16                  THE DEFENDANT: Just the diabetes pills, yes, but no  
17 other types of drugs, no.

18                  THE COURT: Okay. Does it affect your ability to  
19 understand anything?

01:08:34           THE DEFENDANT: It does not.

21                  THE COURT: Okay. Have you ever been under the care  
22 of a doctor or in a hospital for a mental condition?

23                  THE DEFENDANT: I have not.

24                  THE COURT: Okay. And do either of the attorneys have  
01:08:45           any doubt as to the defendant's competence to waive indictment

1 and plead at this time?

2 MR. BARNETT: No, I do not.

3 MR. NETOLS: No, Judge.

4 THE COURT: All right. The Court finds the defendant  
01:08:54 5 is competent to waive indictment and offer a plea of guilty to  
6 the information before the Court.

7 Sir, have you had sufficient time to talk to your  
8 lawyer about the case?

9 THE DEFENDANT: I did, ma'am. I reviewed a number of  
01:09:08 10 times this agreement and the case, and I also reviewed some  
11 today with him too.

12 THE COURT: Okay. And I take it you told him  
13 everything you know about the case, is that correct?

14 THE DEFENDANT: I did.

15 THE COURT: Do you need any additional time to discuss  
01:09:19 16 anything with him?

17 THE DEFENDANT: No.

18 THE COURT: Okay. Are you satisfied with your  
19 counsel's advice and the efforts that he's put forth on your  
01:09:30 20 behalf?

21 THE DEFENDANT: Yes, I am, ma'am, thank you.

22 THE COURT: Are there any pending motions?

23 MR. NETOLS: No.

24 MR. BARNETT: No.

01:09:35 25 THE COURT: Okay.

1           Have you received a copy of the information?

2           THE DEFENDANT: I did.

3           THE COURT: Okay. And did you read it?

4           THE DEFENDANT: I did, ma'am.

01:09:49       5           THE COURT: And I take it you've consulted with your  
6 attorney regarding it?

7           THE DEFENDANT: I did.

8           THE COURT: Okay. Do you wish to have the information  
9 read or do you waive the reading of it?

01:09:59       10          THE DEFENDANT: We'll waive the reading.

11          THE COURT: You'll waive the reading?

12          THE DEFENDANT: Yes, thank you.

13          THE COURT: You do understand the nature of the  
14 charges, the charge before the Court?

01:10:07       15          THE DEFENDANT: I do, ma'am.

16          THE COURT: Counsel, without going into the specific  
17 facts of the case, would you offer just an explanation that,  
18 the explanation that you've given to your client as to the  
19 nature of the charges in this information.

01:10:18       20          MR. BARNETT: Well, he's going to be pleading guilty  
21 to Count 2 and Count 3 of the information. The first charge  
22 Count 2 that he used interstate commerce to facilitate the  
23 commission of a murder for hire.

24          I explained what the elements of that were, I reviewed  
01:10:33       25          the facts of that to him, and he understands that the

1 government can meet their burden of proof on Count 2.

2 On Count 3, that's simply a charge of tax evasion. He  
3 understands that he -- I explained to him if he misstated or  
4 knowingly misstated his income on his tax return in that year,  
5 that he has violated that section of the statute. We reviewed  
6 the facts on that basis, and he understands that he did violate  
7 that.

8 THE COURT: All right. Mr. Finnigan, you do  
9 understand that if you do not waive indictment, you cannot be  
01:11:07 10 charged with a felony unless a grand jury finds by the return  
11 of an indictment that there was probable cause to believe that  
12 the crime charged in the criminal information was committed and  
13 that you committed the crime?

14 THE DEFENDANT: Yes, ma'am, I do.

01:11:21 15 THE COURT: And in order to obtain an indictment, the  
16 government has to present the charges to a grand jury before  
17 the matter may be brought to this Court. Do you understand  
18 that?

19 THE DEFENDANT: Yes, I do, ma'am.

01:11:31 20 THE COURT: And you understand, sir, a grand jury is  
21 supposed of at least 16 and not more than 23 persons, and at  
22 least 12 of those grand jurors must find that there is probable  
23 cause to believe the crime charge was committed by you before  
24 you can be indicted, do you understand that, sir?

01:11:46 25 THE DEFENDANT: I do, ma'am.

1           THE COURT: And the grand jury might or might not vote  
2 probable cause, do you understand that?

3           THE DEFENDANT: I do, ma'am.

01:11:55     4           THE COURT: And if you waive indictment by the grand  
5 jury, then the case will proceed against you on the U.S.  
6 Attorney's criminal information just as though you had been  
7 indicted. Do you understand that, sir?

8           THE DEFENDANT: I do, ma'am.

01:12:14     9           THE COURT: Now, sir, I've been handed a document  
10 entitled "United States of America versus Jerome Finnigan," and  
11 it is entitled "Waiver of indictment," and at the bottom I see  
12 above the -- oh, I'm sorry. This has not been yet executed, is  
13 that correct?

14           Maybe it is.

01:12:32     15          MR. BARNETT: May I approach, Judge?

16           THE COURT: I see a signature, but I can't tell if  
17 it's one or two.

18           MR. BARNETT: Okay.

19           Thank you. It's two.

01:12:42     20          THE COURT: It's two?

21           MR. BARNETT: Mr. Finnigan's is kind of hard to  
22 detect. It's there.

23           THE COURT: Okay. Mr. Finnigan, is that your  
24 signature on the top line of that information?

01:12:54     25          THE DEFENDANT: It is, ma'am.

1           THE COURT: Waiver of indictment, I'm sorry.

2           And before you signed it, sir, did you read it?

3           THE DEFENDANT: I did, ma'am.

4           THE COURT: And did you have any difficulty in reading  
01:13:03 5 it?

6           THE DEFENDANT: I did not.

7           THE COURT: And I take it you discussed the matter of  
8 waiving indictment with your attorney?

9           THE DEFENDANT: I did, ma'am.

01:13:08 10          THE COURT: Have there been my threats or promises  
11 made to you to induce you to waive indictment?

12          THE DEFENDANT: There have not been.

13          THE COURT: Counsel, do you know of any reason why  
14 your client should not waive indictment?

01:13:17 15          MR. BARNETT: I have no reason whatsoever.

16          THE COURT: All right. Mr. Finnigan, is it your wish  
17 to waive indictment by a grand jury as to the charges before  
18 the Court?

19          THE DEFENDANT: It is, ma'am.

01:13:26 20          THE COURT: Okay. Now, let me just read to you what  
21 the information charges. It charges you with civil rights  
22 conspiracy in violation of Title 18 of United States Code  
23 Section 241, that's Count 1; and charges you with use of  
24 interstate commerce facility in the commission of a murder for  
01:13:57 25 hire in violation of Title 8 United States Code Section 1958,

1 that's Count 2.

2 Is he pleading guilty to two or three counts?

3 MR. BARNETT: Two.

4 THE COURT: To two counts?

01:14:09 5 MR. BARNETT: Counts 2 and 3.

6 THE COURT: Okay. And Count 3 charges you with filing  
7 a false tax return in violation of Title 26 of United States  
8 Code Section 7206. That's Count 3. Do you understand that,  
9 sir?

01:14:23 10 THE DEFENDANT: I do, ma'am.

11 THE COURT: Okay. Now, you do understand, Mr.  
12 Finnigan, that under the constitution and the laws of the  
13 United States you are entitled to have a trial by jury as to  
14 charges against you, do you realize that?

01:14:39 15 THE DEFENDANT: I do, ma'am.

16 THE COURT: Do you understand, however, that if you  
17 plead guilty and if I accept your guilty plea, there will not  
18 be a trial, I will simply enter a judgment of guilty and  
19 sentence you on the basis of your guilty plea? Do you  
20 understand that?

21 THE DEFENDANT: I do, ma'am.

22 THE COURT: Do you understand that you have the right  
23 to plead not guilty?

24 THE DEFENDANT: I do, ma'am.

01:14:55 25 THE COURT: Do you understand if you plead not guilty,

01:15:07

1 you have a right to have a speedy trial, you have the right to  
2 see and hear all the witnesses called to testify against you,  
3 you have a right to utilize the subpoena power of this Court to  
4 compel witnesses to come in and testify on your behalf, and at  
5 trial your counsel on your behalf would have a right to  
6 cross-examine witnesses. Do you understand this?

7 THE DEFENDANT: I do.

01:15:18

8 THE COURT: Do you understand further that at trial  
9 you would be presumed to be innocent, and the government would  
10 be required to prove your guilt by competent evidence beyond a  
11 reasonable doubt before you could be found guilty, and you  
12 would not have to prove your innocence? Do you understand  
13 that, sir?

14 THE DEFENDANT: I do, ma'am.

01:15:29

15 THE COURT: You do understand that at any trial, while  
16 you have the right to testify if you chose to do so, you also  
17 would have the right not to testify, and no suggestion or  
18 inference of guilt could be drawn from the fact that you did  
19 not testify. Do you understand that, sir?

01:15:44

20 THE DEFENDANT: I do.

21 THE COURT: Do you understand further that you have  
22 the right to offer evidence tending to show you are not guilty  
23 of the offense charged?

24 THE DEFENDANT: I do, ma'am.

01:15:52

25 THE COURT: Okay. And, Mr. Finnigan, the trial could

1 either be a jury trial or a trial by a judge without a jury.  
2 Do you understand that?

3 THE DEFENDANT: I do, ma'am.

4 THE COURT: However, if the trial were before a judge,  
01:16:03 you, the judge, and the government would all have to agree to  
5 this procedure, do you understand that, sir?

6 THE DEFENDANT: I do, ma'am.

7 THE COURT: If the trial were a jury trial, the jury  
01:16:16 would be composed of 12 lay persons selected at random from the  
8 community. You and your attorney would have an opportunity to  
9 exclude jurors for cause if some kind of bias or  
10 disqualification is shown or without cause by exercising what  
11 we refer to as peremptory challenges or strikes. Do you  
12 understand that, sir?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Do you understand that a jury, before they  
15 could find you guilty, would have to agree unanimously, that  
16 is, all of them would have to agree? Do you understand that,  
17 sir?

18 THE DEFENDANT: Yes, ma'am, I do.

19 THE COURT: Do you understand further, Mr. Finnigan,  
20 that at any trial before a judge or a jury, both would be  
21 guided by the rule that requires that guilt be determined  
22 beyond a reasonable doubt? Do you understand that, sir?

23 THE DEFENDANT: I do, ma'am.

01:17:03

1                   THE COURT: Do you further understand that you, of  
2 course, have a right to have an attorney represent you at  
3 trial. If you didn't have one and couldn't afford one, one  
4 would be appointed to represent you free of charge. Do you  
5 understand that, sir?

6                   THE DEFENDANT: Yes, ma'am.

01:17:12

7                   THE COURT: Do you understand further that if you're  
8 found guilty after a trial and sentenced, you would have a  
9 right to appeal from both the guilty conviction as well as the  
10 sentence, that is to say, any errors or mistakes made by the  
11 Court during the course of the trial or that the lawyers make  
12 would be presented to a three-judge panel, a higher court, to  
13 determine if mistakes were made? Do you understand that, sir?

14                  THE DEFENDANT: I do, ma'am.

01:17:27

15                  THE COURT: And if you were indigent and didn't have  
16 money to provide for a transcript or an attorney, both would be  
17 appointed, both would be given to you free of charge, and other  
18 appeal costs would be free of charge. Do you understand that,  
19 sir?

01:17:40

20                  THE DEFENDANT: I do, ma'am.

21                  THE COURT: Do you also understand that if I accept  
22 your guilty plea, you would still be able to appeal an illegal  
23 sentence and one that is contrary to the guidelines? Do you  
24 understand that? .

01:17:50

25                  THE DEFENDANT: I do.

1                   THE COURT: Now, is there a waiver of appeal?

2                   MR. NETOLS: There is, as well as collateral rights,  
3 Judge. It's on page 24.

4                   THE COURT: Page 24?

01:18:00         5                   All right. Now, notwithstanding what I've just said  
6 about your right to appeal, it appears that in your plea  
7 agreement you are waiving all appellate issues that would have  
8 been available had you exercised your right to trial. Do you  
9 understand that, sir?

01:18:16         10                  THE DEFENDANT: I do, ma'am,

11                  THE COURT: It appears that you are waiving your right  
12 to appeal this conviction, you are waiving any pretrial rulings  
13 made by the Court. Is that correct, sir?

14                  THE DEFENDANT: It is, ma'am.

01:18:47         15                  THE COURT: And you are also waiving any part of the  
16 sentence or the manner in which that sentence will be  
17 determined including any term of imprisonment and fine within  
18 the maximums that the law provides for, do you understand that,  
19 including any order of restitution?

01:19:11         20                  THE DEFENDANT: Yes, ma'am.

21                  THE COURT: And that's in exchange for concessions  
22 made by the US government in your plea agreement, do you  
23 understand that, sir?

24                  THE DEFENDANT: Yes, ma'am.

01:19:18         25                  THE COURT: Including apparently you're dismissing

1 Count 1, is that correct?

2 MR. NETOLS: Yes, Judge.

3 THE COURT: Okay.

4 MR. NETOLS: There's also a 2255 waiver later on in  
01:19:25 that paragraph.

6 THE COURT: Right.

7 MR. NETOLS: And also I don't know how you covered  
8 this with the last defendant, but Mr. Finnigan's cooperation  
9 was prolonged and, so it went to the point where the statute of  
01:19:35 10 limitations would have run, so Mr. Finnigan executed a number  
11 of statute waivers. So paragraph 20 also makes it clear that  
12 one of the things he's waiving is the right to have certain  
13 charges brought within five years.

14 THE COURT: Okay. And it appears that you are also  
01:19:59 15 waiving the right to challenge your conviction and the sentence  
16 as well as the manner in which the sentence was determined, you  
17 are waiving the right to collaterally attack these issues, do  
18 you understand that, sir?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: The waiver that we are talking about,  
21 however, does not apply to any contention by you of  
22 involuntariness or ineffective assistance of counsel, which  
23 would relate directly to the waiver. Do you understand that,  
24 sir?

25 THE DEFENDANT: Yes, ma'am.

1                   THE COURT: And it does not prohibit you from seeking  
2 a reduction of sentence based on a, directly on a change in the  
3 law that would be applicable to you, do you understand that,  
4 sir?

01:20:50       5                   THE DEFENDANT: Yes, ma'am.

6                   THE COURT: You've read this document, is that  
7 correct, sir?

8                   THE DEFENDANT: I have, ma'am.

9                   THE COURT: Okay. And you understand that by pleading  
01:21:10       10 guilty, you are waiving all of the rights that are set forth in  
11 these prior paragraphs. The prior paragraph that I allude to  
12 specifically is paragraph C.

13                  THE DEFENDANT: Yes.

14                  THE COURT: Do you understand that, sir?

01:21:21       15                  THE DEFENDANT: Yes, I do.

16                  THE COURT: As counsel pointed out, you're also  
17 waiving the right to have criminal charges in the information  
18 brought within five years of the last of the alleged acts  
19 constituting the specified violation. Do you understand that,  
01:21:44       20 sir?

21                  THE DEFENDANT: Yes, ma'am, I do.

22                  THE COURT: Okay. So you are waiving your right to  
23 have any of the charges in the information brought against you  
24 within the period that is, that is in the law, in the statute  
01:21:57       25 of limitations, do you understand that?

1                   THE DEFENDANT: Yes, ma'am.

2                   THE COURT: Do you understand, sir, that if you plead  
3 guilty, all the rights that I've just described to you, you are  
4 waiving or giving up?

01:22:14       5                   THE DEFENDANT: Yes, ma'am, I do.

6                   THE COURT: Do you understand if you plead guilty, if  
7 I accept your guilty plea, by there will not be a trial, I will  
8 simply enter a finding of guilty and sentence you on the basis  
9 of your guilty plea after I have considered the presentence  
01:22:25       10 investigation, the sentencing guidelines and the plea  
11 agreement? Do you understand that, sir?

12                  THE DEFENDANT: I do, ma'am.

13                  THE COURT: All right. Other than the plea agreement  
14 that is contained in this document that you've signed --

01:22:47       15                  Maybe you could direct me, what page is the signature  
16 on this?

17                  MR. NETOLS: It should be on, the signature page  
18 should be on the last page.

19                  THE COURT: Judge, I think you may have the draft I  
01:23:10       20 gave you because I see the red mark on the top. They are  
21 identical, so you can't tell unless you go to the back. It  
22 should have two staples, the plea with the two staples across  
23 the top is the original.

24                  THE COURT: I have it.

01:23:27       25                  Have there been any other promises made to you that

1 are not in writing, sir?

2 THE DEFENDANT: There have not, ma'am.

3 THE COURT: Okay.

4 MR. NETOLS: Judge, the only thing that is there, it's  
01:23:36 5 understood is there are state charges that are based on the  
6 same conduct. After Mr. Finnigan is sentenced in this case,  
7 the state, the chief of special pros from the State's  
8 Attorney's office is here, the state is going to dismiss the  
9 state charges.

01:23:49 10 MR. BLAKEY: That's correct, Your Honor.

11 THE COURT: That is correct? Do you understand that?

12 THE DEFENDANT: I do, Your Honor.

13 THE COURT: Now, sir, on page 30 of this document I  
14 see a number of signatures, one of which is above the  
01:24:01 15 typewritten name of Jerome A. Finnigan?

16 THE DEFENDANT: That's correct.

17 THE COURT: Is that your signature?

18 THE DEFENDANT: It is, ma'am.

19 THE COURT: And did you read this document before you  
01:24:09 20 signed it?

21 THE DEFENDANT: I did.

22 THE COURT: Did you have any difficulty or trouble  
23 reading it?

24 THE DEFENDANT: None whatsoever, ma'am.

01:24:14 25 THE COURT: I take it you discussed each and every

1 part of it with your attorney?

2 THE DEFENDANT: I did.

3 THE COURT: Do you need any additional time to discuss  
4 any parts of it with him at this time?

01:24:22 5 THE DEFENDANT: No, ma'am.

6 THE COURT: Do you have any questions about this  
7 agreement?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Okay. Just for the record, could you just  
01:24:28 10 summarize for me what, if any, agreements or promises have been  
11 made to you in connection with these charges.

12 THE DEFENDANT: No agreements or promises have been  
13 made to me regarding this, Your Honor.

14 THE COURT: Are there any counts -- there are counts  
01:24:42 15 that will be dismissed, is that correct?

16 THE DEFENDANT: There are counts that will be  
17 dismissed, that is correct, but that was above and beyond.  
18 There were no promises made by Mr. Netols, Mr. Blakey or Miss  
19 McCarthy regarding this plea other than what's contained in the  
01:24:58 20 plea agreement, ma'am.

21 THE COURT: Okay.

22 MR. BARNETT: Your Honor, may I speak --  
23 (Pause.)

24 THE DEFENDANT: I didn't -- I misunderstood what you  
01:25:19 25 were saying, Your Honor, I'm sorry.

1           My understanding of the plea agreement, is that what  
2 you want?

3           THE COURT: Yes.

4           THE DEFENDANT: Okay, I'm sorry.

01:25:25       5           Yes, the understanding is that I am going to plead to  
6 two counts. The other count is going to be dismissed. I'm  
7 going to be sentenced to the guideline range that Mr. Netols  
8 and Mr. Barnett have arranged between the two of them, 120 to  
9 156 months, and that I have no expectations from you other than  
01:25:50       10          the fact that when the presentence investigation is done and my  
11 background and everything else, that you would look at that as  
12 a whole, as a person I am and not based on just these charges  
13 today. That's not the person I am. So.

14           THE COURT: Okay. Now, Mr. Finnigan, you do  
01:26:35       15          understand that the maximum possible penalty under Count 2 is  
16 ten years imprisonment?

17           THE DEFENDANT: I do, ma'am.

18           THE COURT: And Count 2 also carries a maximum fine of  
19 \$250,000.

01:26:51       20          THE DEFENDANT: I do, ma'am.

21           THE COURT: And the Court also must order costs of  
22 prosecution not to exceed \$500?

23           THE DEFENDANT: Yes, I do.

24           THE COURT: And do you understand that the Court may  
01:27:04       25          also impose a period of supervised release of not more than

1 three years?

2 THE DEFENDANT: I do, ma'am.

3 THE COURT: And Count 3 carries a maximum sentence of  
4 three years imprisonment and also carries a maximum fine of  
5 \$250,000 and the Court must also order costs of prosecution  
6 also not to exceed \$500.

7 Can you hear me?

8 THE DEFENDANT: Yes, ma'am, I can.

9 THE COURT: Okay. And with respect to that count, the  
01:27:34 10 Court may also impose a sentence of -- strike that -- a term of  
11 supervised release of not more than a year. Do you understand  
12 that, sir?

13 THE DEFENDANT: I do, ma'am.

14 THE COURT: Do you understand the Court must also  
01:27:44 15 order restitution to the victims of the offense in the amount  
16 the Court will determine? Do you understand that, sir?

17 THE DEFENDANT: Yes, ma'am, I do.

18 THE COURT: And you must, you will be assessed \$100 on  
19 each count to which you plead guilty in addition to any other  
01:27:57 20 penalty or restitution. Do you understand that, sir?

21 THE DEFENDANT: I do, ma'am.

22 THE COURT: Now, I take it you and your attorney have  
23 also discussed the sentencing guidelines?

24 THE DEFENDANT: We have, ma'am.

01:28:16 25 THE COURT: Do you understand that the Court will be

1 guided by the sentencing guidelines?

2 THE DEFENDANT: Yes, ma'am, I do.

3 THE COURT: And do you understand they are advisory,  
4 they are not mandatory, but the Court must also take them into  
5 consideration?

6 THE DEFENDANT: I do, ma'am.

7 THE COURT: And you understand the guidelines consist  
8 of two big numbers, two numbers, I should say.

9 THE DEFENDANT: Yes, ma'am, I do.

01:28:45 10 THE COURT: Criminal offense level and criminal  
11 history category?

12 THE DEFENDANT: Yes.

13 THE COURT: With respect to the sentencing guidelines,  
14 the count, the offenses of conviction in Counts 1, 2, and 3 --  
01:29:08 15 strike that.

16 With respect to Count 1, let's go like that. With  
17 respect to Count 1, the offense level, the base offense level  
18 for unlawful restraint will be 32. The base offense level  
19 would be increased by six to 38 because you were a public  
01:29:47 20 official at the time of the offense and the offense was  
21 committed under color of law. And the base offense level will  
22 be increased by another two to a level 40 for obstruction based  
23 upon conduct constituting the offense of conviction for Count  
24 2.

01:30:04 25 And the base offense level applicable to Count 2 is

1       33, and there are no other adjustments that apply to that.

2                  The base offense level for Count 4 and the tax offense  
3 would be 14, because the tax loss is about \$55,931, the base  
4 offense level would be 14. And there was a failure to report  
01:30:34       5 income from this criminal activity, so the base offense level  
6 in that one will be increased by two to 16.

7                  We have multiple counts here for Count 1 which has an  
8 offense level of 40, that will be one unit; Count 2 has an  
9 offense level of 33, that will be a half unit; and Count 3 has  
01:31:08       10 an offense level of 16, that will be no units. So the total of  
11 one and a half units would result in a one-level increase to  
12 the offense level to 41.

13                 There will be a two-level reduction, and because you  
14 timely notified the government of your intent to plead guilty,  
01:31:40       15 you would be entitled to a two-level reduction for acceptance  
16 and a one-level reduction in the offense level.

17                 And it appears that what we know about your background  
18 at this point is that you are in a criminal history category I,  
19 but there will be an investigation to make that determination.

01:31:56       20                  Do you understand that?

21                 THE DEFENDANT: Yes, ma'am.

22                 THE COURT: Are there any questions about the  
23 sentencing guidelines?

24                 THE DEFENDANT: No, ma'am.

01:32:00       25                 THE COURT: Based upon what's known at this point

1 then, the anticipated offense level will be 38, and with the  
2 criminal, assuming your criminal history category is I, the  
3 sentencing guideline range would be 235 to 293 months  
4 imprisonment, which would be constrained by the 156-month  
01:32:30 5 combined statutory maximum of Counts 2 and 3, and that would be  
6 in addition to supervised release and any fine and restitution  
7 the Court may impose.

8                  Do you understand that, sir?

9                  THE DEFENDANT: I do, ma'am.

01:32:41 10                  THE COURT: Are there any questions?

11                  THE DEFENDANT: No, ma'am.

12                  THE COURT: Do you understand that these calculations  
13 are preliminary in nature; ultimately the probation department  
14 will make a determination, and then ultimately the Court will  
01:32:53 15 make its final decision?

16                  THE DEFENDANT: Yes, ma'am.

17                  THE COURT: Sir, has anybody threatened you in any way  
18 to cause you to plead guilty?

19                  THE DEFENDANT: No, ma'am.

01:33:05 20                  THE COURT: Has anybody forced you to cause you to  
21 plead guilty?

22                  THE DEFENDANT: No, ma'am.

23                  THE COURT: Apart from this plea agreement, have there  
24 been any promises made to you or any threats or coercion made  
01:33:16 25 to you by anyone, the US Attorney or anybody else, to cause you

1 or to induce you to plead guilty?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: Is your decision to plead guilty entirely  
4 voluntary?

01:33:26 5 THE DEFENDANT: It is, ma'am.

6 THE COURT: You do understand, sir, that the final  
7 decision as to what your sentence will be rests with this Court  
8 once I've considered the sentencing guidelines and the plea  
9 agreement and the calculations that we have talked about?

01:33:40 10 THE DEFENDANT: I do, ma'am.

11 THE COURT: All right, sir. We are almost finished.

12 What I need you to do at this point is just very  
13 briefly in your own words if you can just relate what precisely  
14 it is that you did that resulted in these charges.

01:33:54 15 THE DEFENDANT: Okay, ma'am. First and foremost, I  
16 say today that I appear before you and accept with full  
17 responsibility my actions which have brought me here today.

18 What I did was, continued a conversation that I had.  
19 I did not initiate it, but unfortunately I continued it. I was  
01:34:16 20 under a great duress. I was afraid the individual that was  
21 involved with the conversation with me was going to cooperate  
22 because he was being pressured by the federal government and  
23 the state's attorney, and I continued, for lack of a better  
24 word, the charade that I tried to use to persuade him to not  
25 hurt, to not cooperate against me.

1           But those actions that I took were wrong, in  
2 furtherance by giving him a picture, by letting him know that  
3 we could look for somebody, a hit man to do this. It was not  
4 my intent to kill anybody, but I put myself in a bad situation.  
01:35:08 5 I don't think I would have did it if I was thinking clearly.  
6 It was totally out of character for me. I'm not a violent  
7 person. I have no violence in my background. And like I said,  
8 I just think that it was a big mistake on my part, and although  
9 it was a mistake, it was unlawful, and I accept responsibility  
01:35:28 10 for that.

11           THE COURT: All right. Well, you haven't really given  
12 me a lot of facts. What I'm going to do, I'm going to ask the  
13 government to summarize for me what its evidence would be with  
14 respect to these counts. And I want to you listen very  
15 carefully, because I am then going to ask you what if anything  
16 you agree with and what if anything you disagree with.  
01:35:41

17           THE DEFENDANT: Okay, ma'am.

18           THE COURT: All right. Counsel would you please  
19 summarize what your evidence would be.

01:35:49 20           MR. NETOLS: Yes, Judge. If we were to go to trial in  
21 this case, our evidence largely would be in the form of tape  
22 recorded conversations.

23           It would be that Mr. Finnigan had a conversation with  
24 someone who is identified in the plea agreement as Chicago  
01:36:05 25 police officer 1. That's actually co-defendant Herrera. And

1 during the course of that conversation, they continued a  
2 discussion, as Mr. Finnigan indicated, that they had concerning  
3 the possibility of hiring someone to kill another police  
4 officer, Mr. Brazynski, that's Chicago police officer 2, who  
01:36:26 5 they thought was cooperating against them in the state  
6 investigation, the state case.

7 And during this meeting, the first meeting, Finnigan  
8 indicated that he was not successful in trying to, in finding  
9 somebody to kill police officer 2, and he suggested that Mr.  
01:36:46 10 Herrera try to find someone to kill police officer 2. Again,  
11 Mr. Finnigan didn't know that Mr. Herrera was cooperating with  
12 the government in recording the conversation.

13 A few days later on the 21st there was a telephone  
14 conversation at about 5:48 in which Mr. Finnigan talked to Mr.  
01:37:06 15 Herrera and they agreed to meet again. During that meeting Mr.  
16 Herrera indicated that he had found someone to kill the other  
17 police officer, and what he needed from Mr. Finnigan was a  
18 photograph of that other police officer in civilian clothes.  
19 They did not want to give the photograph to the killer,  
01:37:23 20 according to the undercover ruse, they wouldn't want the killer  
21 to know that the person he was going to kill was a police  
22 officer, they didn't want to use a paragraph of the person in  
23 their police uniform.

24 And so Mr. Finnigan had a photograph of Officer  
01:37:46 25 Brazynski in civilian clothes, and in that recorded

1 conversation Mr. Finnigan gave that photograph to Mr. Herrera,  
2 told him to be careful handling it, to wipe any prints off, and  
3 it was clear in the course of that conversation that -- or in  
4 that, at that time that, based on what was said to Mr. Herrera,  
01:38:08 5 that Mr. Finnigan believed that Mr. Herrera's intent was to  
6 give that picture to somebody who was going to use that picture  
7 to identify the police officer and kill him.

8 And, further, Mr. Finnigan agreed to provide an  
9 address, a new address for the targeted police officer.

01:38:25 10 Later that same day in another conversation at 6:28  
11 they agreed to meet briefly, at which point Mr. Finnigan was  
12 supposed to give the address of the other police officer to Mr.  
13 Herrera. That meeting never came to fruition because the  
14 police officers, Mr. Herrera and Mr. Finnigan, correctly  
01:38:47 15 surmised that they actually were being surveilled by federal  
16 agents.

17 And so the basis of the count of conviction of, for  
18 Count 2 is Mr. Finnigan's use of the telephone to set up that  
19 second meeting where he was supposed to give the address of  
01:39:03 20 police officer 2 after he had given the photograph to Mr.  
21 Herrera and Mr. Herrera told him he was going to give that  
22 photograph to someone to identify the person who was to be  
23 killed.

24 With respect to the other count, a tax offense, the  
01:39:19 25 evidence would show, based on the money that Mr. Finnigan took

01:39:48

1 during the tax year 2005, that he filed a tax return on behalf  
2 of himself and his wife in which the amount of income was  
3 declared to be approximately -- let me make sure I'm using --  
4 I'm looking at the wrong tax year. There's two tax years,  
5 there's a charged tax year and there's a relevant conduct tax  
6 year.

01:40:06

7 The charged tax year is 2004, and the tax return Mr.  
8 Finnigan filed under penalty of perjury was that his income was  
9 \$46,000 approximately. The reality is his income was about  
10 \$230,000 and the \$174,000 that was not on the return was income  
11 that he had obtained through taking money from arrestees during  
12 that tax year.

01:40:24

13 THE COURT: All right. So you've heard the statement  
14 of the assistant U.S. attorney. Is it correct?

15 THE DEFENDANT: It is, ma'am.

16 THE COURT: Do you disagree with any part of the  
17 statement?

18 THE DEFENDANT: I do not.

19 THE COURT: How do you plead to Count 2?

01:40:31

20 THE DEFENDANT: Guilty, ma'am.

21 THE COURT: And how do you plead to Count 3?

22 THE DEFENDANT: Guilty.

01:40:40

23 THE COURT: Mr. Finnigan, since you do acknowledge  
24 that you are in fact guilty as charged in Counts 2 and 3, you  
25 have freely waived indictment and you've had the assistance of

01:40:54

1 counsel, you understand what your trial rights are, you  
2 understand what the maximum possible punishment is, you're  
3 voluntarily waiving indictment and pleading guilty, I will  
4 accept your waiver of indictment, I will accept your guilty  
5 pleas. I'll enter a judgment of guilty on the pleas on Counts  
6 2 and 3 of the information.

01:41:10

7 I'm going to order a presentence discretion. A  
8 probation officer will visit you and will conduct an interview  
9 with you, ultimately will prepare a presentence investigation  
10 report. Before it is submitted to the Court, you and your  
11 attorney and the government will have an opportunity to review  
12 it for factual accuracy.

13 And we'll set this matter for sentencing.

14 THE CLERK: August 11.

01:41:25

15 THE COURT: How is August 11, gentlemen? How is that?

16 MR. BARNETT: That's fine.

17 THE COURT: That will be at 11:30.

18 MR. NETOLS: I think that's good, Judge.

19 THE COURT: Okay.

01:41:35

20 Anything else to address right now?

21 MR. NETOLS: Same bond to stand?

22 THE COURT: Same bond to stand.

23 MR. NETOLS: Which is actually --

24 THE COURT: Which is no bond.

01:41:45

25 MR. NETOLS: Yes.

1 THE COURT: Right.

2 MR. NETOLS: That's all.

3 MR. BARNETT: Thank you.

4 THE COURT: I'll see you back here in August.

01:41:52

5 THE DEFENDANT: Thank you, Your Honor.

6 || (Proceedings concluded.)

## C E R T I F I C A T E

I, Michael P. Snyder, do hereby certify that the foregoing is a complete, true, and accurate transcript of the proceedings had in the above-entitled case before the Honorable BLANCHE M. MANNING, one of the judges of said Court, at Chicago, Illinois, on April 26, 2011.

13

/s/ Michael P. Snyder

15

## Official Court Reporter

16

## United States District Court

17

## Northern District of Illinois

18

## Eastern Division

19

20

21

22

23

24

25